IN THE

Supreme Court of the United States

October Term, 1964
No. 562

THE QUECHAN TRIBE OF FORT YUMA RESERVATION,
Petitioner,

vs.

CLYDE F. THOMPSON, *et al.*, and ERNEST RISLING, *et al.*, members, and as the representatives of, and on the relation of the Indians of California and the United States of America.

On Petition for a Writ of Certiorari to the United States Court of Claims.

REPLY BRIEF OF PETITIONER TO BRIEF FOR THE UNITED STATES.

In its statement of the question presented, the United States begs the question, by assuming that the Indians for whom judgment has been entered in the main case are a different class from the petitioning tribe. (Br. in Opp. of U. S. p. 2.) It may be urged in reply that petitioner, in its statement of the question presented, also begs the question, by assuming that the petitioner and the other tribes are members of the same class. (Pet. p. 2.) The difference is that the petitioner's assumption is founded on facts which are undisputed.

The class action by the respondents Thompson and Risling was filed on behalf of the Indians of California, as defined in terms of the 1928 Act, being "all Indians

who were residing in the State of California on June 1, 1952, and their descendants now living in said State". (Br. in Opp. of U. S. p. 3, Fn 1.) The settlement agreement in the main case defined the phrase, "Indians of California" as "all members of a class or group consisting of descendants of 'all those California Indians who were residents of California on June 1, 1852'" (Pet. p. 9.) The question was left open of whether the Quechan and certain other Indians could participate, but none of the parties questions the fact that all members of the Quechan tribe are within the stated definition. (Pet. p. 9.) It follows that, from a factual standpoint, the assumption made by the petitioner in its statement of the question presented, is correct, and the assumption made by the United States in its statement of the question is erroneous.

The question involved is one of law, and not of fact. In determining what the question is, it should be noted that all of the parties are in agreement that the Quechan could have intervened at the time when the Yana, Shasta and Yokiah tribes came in to the main case. (Br. in Opp. of Thompson, *et al.*, p. 5; Br. in Op. of the U. S. p. 5.) As stated by the respondents, these tribes "merged" their claims with that of the main group. (Br. in Opp. of Thompson, *et al.*, p. 5, of U. S. p. 5.) Their members will share in the judgment equally with all other members of the class, Indians of California, without regard to how many people there are in these tribes, or the value of their lands, which they contributed to the whole. No inquiry as to these factors was made by the Commission. (Reply Br. of Pet. to Br. of Thompson, App. 3.) It is clear, therefore, that these tribes were considered to be, in fact, members of the class Indians of California, and that they had the optional right, either to

pursue their own claims, or to join with the main group.

The question then becomes one of whether anything has happened since the intervention of the Yana, Shasta and Yokiah tribes, which would prevent any other member of the class, such as the Quechan, from taking the same step. This should, we believe, depend only upon whether subsequent orders of the Commission have established a cut-off date, beyond which intervention cannot be permitted, and whether, even in the absence of such limitation, it would be prejudicial to other members of the class to permit intervention by the Quechan at this time.

As we have pointed out, none of the orders expressly require an election. We submit that none of them by implication require, or was intended to require, an election on the part of members of the class, within any certain time, to proceed with their own cases, or to intervene in the main action. At one time, the view of the majority was that the independent tribes had no choice, and that they would have to separately prosecute their own claims. This was the opinion of January 20, 1958, 6 Ind. Cl. Comm. 87. (Br. of Thompson, App. A.) That position was changed, when the three independent tribes intervened. 6 Ind. Cl. Comm. 674 (App. Pet. Reply to Br. of Thompson.)

If, and to the extent that any subsequent orders can be construed as requiring an election, and we do not believe they can be so construed, the orders have been modified by the subsequent admission of the Mission Indians and the Pit River Indians. They have come in as members of the class, to participate in the single judgment. (Pet. 8-9, Pet. App. 11-12.)

The brief of the United States is in error in its statement to the effect that claims of both the Mission and the Pit River Indians overlapped those of the "Indians of California". This is stated to be the only ground for permitting those tribes to consolidate their suits with the *Indians of California* case. (pages 5 and 8 of U. S. brief). On reference to page 6 of the brief in opposition, for Thompson, *et al.*, it appears that the Mission Indians, whose land, of course had been placed in Area A by order of the commission, amended their claim to include some land in Area B. As to the Pit River Indians, there is only the bare statement of a question as to "the identity of some of respondents' Indians and Pit River Indians." The nature of this question is not explained. However, the fact is, as we have pointed out, and it has not been and cannot be denied, that all of the Quechan Indians are precisely in the same classification as those represented by the respondents, Thompson and Risling.

On the question of prejudice, there would be no more change in the situation if the Quechan are admitted now, than there would have been if they had been admitted earlier. They would then have participated with the other Indians of California, on an equal basis, in the single judgment, and their California land would have been included in the valuation. That will be the result of intervention now.

At page 6, the brief of the United States refers to the series of meetings held to approve the settlement, and at page 8, it says, "and to permit the petitioner to intervene at this late date would require the cancellation of the settlement arrangement so laboriously arrived at — ". As the record shows, this is precisely the type of *ad hoc*

argument, which was strenuously urged before the Commission and the Court of Claims. It is invalid, for two reasons. In the first place, inconvenience should not be a ground for unfair treatment of members of a class, and in the second place, it is not true. In the stipulation, which was approved by the Indians at the various meetings, the question was expressly left open as to whether or not the Quechan and other members of the class, not then included in the settlement, would be entitled to participate in the single judgment fund. (Pet. p. 9) The Commission has now made this determination. In its opinion (Pet. App. 8) it says:

"Of course it is incumbent upon this Commission to determine the ownership of a claim. We must in our awards define the tribe, band or identifiable group entitled to the judgment."

In the final judgment (Pet. App. 12), it is specified "that said determination or judgment be a single judgment in favor of all of the petitioners (as representatives of the tribe, bands or groups on whose behalf said petitions were presented, as construed and defined by our order of March 3, 1964, in Dockets 31, 37 and 319) as a single class." The order of March 3, 1964, to which this refers is the order, affirmed by the Court of Claims, of which the petitioner complains (Pet. App. 1, 2 and 3.)

Any intimation, if it is so intended, in the brief for the United States (pages 8-9), that it is still open to Congress to enlarge the class, is erroneous. Under Section 22(a) of the Indian Claims Commission Act, 60 Stat. 1049, a determination by the Commission has "the effect of a final judgment of the Court of Claims". Congress has wide discretion in the manner of paying

such a judgment, and in fact does not generally pay over money to the Indians in the case of an Indian judgment, but the group entitled to the judgment in this case has been determined by the Commission, and there is no reason to think that Congress would change it, even if it could do so.

At any rate, no further meetings would be required by the Indians who have approved the settlement, because their approval was given on the express understanding and statement that such a determination would be made.

In conclusion, we submit that no valid reason has been given for discriminating against the petitioner in the settlement of the class suit, and that the unfair treatment of a large number of people who are members of a dependent nation justifies the review by this Court.

Respectfully submitted,

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December, 1964.